

## CCRB INVESTIGATIVE RECOMMENDATION

|   |  |                           |  |   |                                 |
|---|--|---------------------------|--|---|---------------------------------|
| Investigator:<br>Tara Mancini 7                   | Team:<br>Team # 7                                      | CCRB Case #:<br>200515292 | <input checked="" type="checkbox"/> Force              | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|   |  |                           | <input checked="" type="checkbox"/> Abuse              | <input type="checkbox"/> O.L.                 | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Monday, 12/19/2005 11:05 PM   | Location of Incident:<br>141st Street and Lenox Avenue | Precinct:<br>32           | 18 Mo. SOL<br>6/19/2007                                | EO SOL<br>6/19/2007                           |                                 |
| Date/Time CV Reported<br>Tue, 12/27/2005 10:05 AM | CV Reported At:<br>CCRB                                | How CV Reported:<br>Phone | Date/Time Received at CCRB<br>Tue, 12/27/2005 10:05 AM |   |                                 |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |

| Witness(es) | Home Address |
|-------------|--------------|
|             |              |

| Subject Officer(s)   | Shield | TaxID  | Command |
|----------------------|--------|--------|---------|
| 1. POM Robert Dress  | 00910  | 933759 | 032 PCT |
| 2. POF Melissa Clark | 29494  | 932472 | 032 PCT |

| Officer(s)          | Allegation   | Investigator Recommendation |
|---------------------|--|-----------------------------|
| A.POM Robert Dress  | Abuse: PO Robert Dress stopped the car in which § 87(2)(b) was an occupant.  |                             |
| B.POF Melissa Clark | Discourtesy: PO Melissa Clark spoke obscenely and rudely to § 87(2)(b)       |                             |
| C.POM Robert Dress  | Force: PO Robert Dress used physical force against § 87(2)(b)                |                             |
| D.POM Robert Dress  | Abuse: PO Robert Dress frisked § 87(2)(b)                                    |                             |
| E.POM Robert Dress  | Abuse: PO Robert Dress searched the car in which § 87(2)(b) was an occupant. |                             |

## Synopsis

§ 87(2)(b) reported that on December 19, 2006 at approximately 11:05 PM, his vehicle was stopped by PO Robert Dress at the intersection of 141<sup>st</sup> Street and Lenox Avenue in Manhattan. (allegation A). PO Dress and his partner PO Melissa Clark approached § 87(2)(b)'s vehicle and PO Clark and § 87(2)(b) exchanged words, which resulted in PO Clark calling § 87(2)(b) a "smart ass" (allegation B). PO Dress physically grabbed § 87(2)(b) and pulled him out of the vehicle (allegation C). Immediately after, PO Dress proceeded to frisk § 87(2)(b) (allegation D) and search § 87(2)(b)'s vehicle (allegation E). § 87(2)(b) was allowed to leave the scene after he was issued two summonses for § 87(2)(b).

§ 87(2)(g)

## Summary of Complaint

On December 27, 2005, § 87(2)(b) called the CCRB to report the following incident, which occurred on December 19, 2005 at approximately 11:05 PM (enclosure 7a-b). § 87(2)(b) stated that two police officers stopped his vehicle for no apparent reason. The officers looked into § 87(2)(b)'s vehicle and observed an open container of Smirnoff malt beverage. The officers asked § 87(2)(b) to step out of the vehicle, and then proceeded to frisk him and search § 87(2)(b)'s vehicle. § 87(2)(b) was then issued a summons for § 87(2)(b).

§ 87(2)(b) was interviewed on February 13, 2006 (enclosure 8a-d). § 87(2)(b) stated that on December 19, 2005 he had been driving with his friends, § 87(2)(b) who was sitting in the rear on the passenger's side, and Dusty Rubaine who was sitting in the front passenger seat. § 87(2)(b) was driving his Toyota Camry sedan uptown on Lennox Avenue between 141<sup>st</sup> and 142<sup>nd</sup> Streets, when § 87(2)(b) saw a female that apparently peaked his interest, and he jumped out of § 87(2)(b)'s vehicle to speak to her. There were a lot of people standing outside on the block. § 87(2)(b) asked § 87(2)(b) to exit the vehicle and to get in the front passenger seat, because § 87(2)(b) had failed to close the door. § 87(2)(b) was in the far right lane, however it was a lane of traffic, and § 87(2)(b) did not want to idle there any longer. He was not impeding any traffic.

§ 87(2)(b) looked to his left and observed an idle police vehicle. § 87(2)(b) entered the front seat, and § 87(2)(b) continued to drive, and so did the police vehicle. § 87(2)(b) passed the police vehicle, and as he did so, the police vehicle slowed down to let § 87(2)(b) drive ahead of the police vehicle. Once § 87(2)(b) was in front of the officers, they pulled behind him, activated the vehicle sirens, and instructed § 87(2)(b) to pull his vehicle over and shut off the engine. § 87(2)(b) pulled over and both his front windows were down just a crack. PO Dress, who was identified by the summonses that he issued to § 87(2)(b) told § 87(2)(b) to roll down his window. § 87(2)(b) responded "I can't. You told me to turn off my car." The female officer, who was later identified by the CCRB as PO Melissa Clark, was standing on the passenger side of the vehicle when she retorted, "So you're a smart ass," and § 87(2)(b) responded, "No, I'm a smart person." PO Dress then told § 87(2)(b) to turn his car on and put his windows down, and § 87(2)(b) complied.

PO Dress asked § 87(2)(b) “What’s going on? What are you doing? Why did your friend jump out of the car?” § 87(2)(b) explained why his friend ran out of the car; to go speak to a female. PO Dress asked where § 87(2)(b) was coming from, and § 87(2)(b) gave PO Dress the address of his home, which he had just come from. PO Dress was looking in § 87(2)(b)’s car, and he asked § 87(2)(b) what was in the black plastic bag. § 87(2)(b) responded that it was junk food. § 87(2)(b) believes that PO Dress did not like his answer, so PO Dress reached one of his arms into § 87(2)(b)’s vehicle and grabbed the black plastic bag from the cup holder in the middle console. PO Dress looked inside of the bag and found one empty container of Smirnoff malt beverage, and thus asked § 87(2)(b) if he had been drinking. § 87(2)(b) stated that he was not drinking, and that his friend who had jumped out of the vehicle drank the beverage. PO Dress stated that nobody is supposed to drink in the vehicle, and § 87(2)(b) stated that he did not know that. He believed it was ok as long as he was not drinking. § 87(2)(b) offered to take a breathalyzer. PO Dress asked for § 87(2)(b)’s license and registration, and § 87(2)(b) complied.

PO Dress ordered § 87(2)(b) out of his vehicle, and § 87(2)(b) asked, “For what?” PO Dress repeated himself, opened § 87(2)(b)’s car door to grab § 87(2)(b)’s left arm and pulled him out of his vehicle. § 87(2)(b) and PO Dress were verbally arguing about PO Dress’ authority to pull § 87(2)(b) out of his vehicle. PO Dress started tugging on the front of § 87(2)(b)’s leather jacket, asking him, “You want something?” § 87(2)(b) understood PO Dress to be challenging him to a fight. § 87(2)(b) replied, “No,” and admitted that he was being sarcastic towards the officer because he was upset over the situation. § 87(2)(b) told PO Dress that the officer was pulling on his jacket only because he knew that § 87(2)(b) could not retaliate back. § 87(2)(b) stated that he did not threaten PO Dress or call him any names.

Meanwhile, PO Clark had taken § 87(2)(b) to the rear of § 87(2)(b)’s vehicle, near the trunk. § 87(2)(b) said that § 87(2)(b) had told him that that the female officer frisked him, but § 87(2)(b) did not observe this.

PO Dress frisked § 87(2)(b) around his waist area on his legs. PO Dress did not enter any pockets. § 87(2)(b) was wearing a black leather coat, and sweat suit. After § 87(2)(b) was frisked, PO Dress told § 87(2)(b) to go sit at the back of his car, which § 87(2)(b) thought that PO Dress meant he had to sit inside the back seat, so he opened the right rear door. PO Dress yelled, “What are you doing?” while pulling § 87(2)(b) from behind. PO Dress then instructed § 87(2)(b) to stand at the back of his vehicle, at the trunk. § 87(2)(b) complied and stated “Bro this ain’t necessary.” PO Dress grabbed § 87(2)(b) by his front chest area and stated “My name’s not bro, don’t call me bro.” § 87(2)(b) did not respond.

PO Dress then searched § 87(2)(b)’s whole vehicle, excluding the trunk. PO Dress opened every door and looked in every part of the vehicle, the floor and the pockets in the back of the seats. However, he is not sure if the glove compartment was entered. PO Dress came back and started “beefing” with § 87(2)(b). § 87(2)(b) stated that PO Dress slammed § 87(2)(b)’s doors so hard that the car alarm went off.

While PO Dress was searching the vehicle, § 87(2)(b) had asked PO Clark if PO Dress was allowed to search his vehicle, and she told § 87(2)(b) to “Shut-up” and then further questioned § 87(2)(b) “Do you know what goes around in this area?” § 87(2)(b) replied “No,” as he is not even from NY. PO Clark inquired into why § 87(2)(b) had Pennsylvania license plates. § 87(2)(b) explained that he has a place in both New York and Pennsylvania.

After PO Dress finished searching § 87(2)(b)’s vehicle, he instructed § 87(2)(b) to go inside his own vehicle, and § 87(2)(b) complied, and § 87(2)(b) followed. § 87(2)(b) called his cousin, § 87(2)(b) and asked him both if what PO Dress had done was appropriate, and if he was able to come to the scene. § 87(2)(b)’s cousin was not in the vicinity, so he asked § 87(2)(b) to put PO Dress on the cellular phone. § 87(2)(b) knew that PO Dress would not get on the phone, so he did not try. § 87(2)(b)

§ 87(2)(b) sat there while PO Dress went to his vehicle and wrote summonses for § 87(2)(b). PO Dress returned with a summons for § 87(2)(b) and one for § 87(2)(b). § 87(2)(b) was then allowed to drive away.

§ 87(2)(b) stated that he did not stop his car to speak to anybody else while in the area. The only place he had stopped was the corner store on 130 Street, where they purchased the snacks and alcohol.

### **Results of Investigation**

#### ***Civilian Witnesses***

During § 87(2)(b)'s CCRB interview, he provided the telephone number for § 87(2)(b) the civilian that was present during the incident. Several telephone calls were made to § 87(2)(b) in order to obtain a statement, however he refused to cooperate with the CCRB.

#### ***Officer Identification***

PO Robert Dress was identified by § 87(2)(b) as PO Dress had issued two summonses to him (enclosure 9). PO Melissa Clarke was identified by the 32<sup>nd</sup> Precinct's roll call, as the partner assigned to work with PO Dress on December 19, 2005 (enclosure 15a-15i).

#### **Officer Statements**

##### ***PO Robert Dress***

PO Robert Dress was interviewed by the CCRB on April 26, 2006 (enclosure 11a-b). PO Dress stated that on December 19, 2005 he worked 1500 x 2335. He was assigned to a marked vehicle, number 2339.

PO Dress stated that he was the driver that day, and that he was traveling north on Lenox Avenue and saw § 87(2)(b)'s vehicle parked in the middle of the road, as PO Dress was in his patrol car, behind § 87(2)(b)'s. PO Dress sounded the siren in order to have the vehicle move, but § 87(2)(b) did not move the vehicle. PO Dress and PO Clark approached the vehicle. PO Dress was on the driver's side; PO Clarke on the passenger side. PO Clark asked § 87(2)(b) for his license, registration, and proof of insurance; § 87(2)(b) complied.

Inside the center console he observed an open glass bottle of Smirnoff malt beverage inside of a black plastic bag, but does not recall at what point he learned that it was Smirnoff. PO Dress asked § 87(2)(b) what was inside the bag, and § 87(2)(b) responded "candy." PO Dress asked § 87(2)(b) to hand him the bottle, and § 87(2)(b) responded, "No, come in here yourself and grab the bottle."

At that time, PO Dress asked § 87(2)(b) to exit the vehicle, and § 87(2)(b) complied. PO Dress went into the vehicle and retrieved the bottle and issued him a summons for open container, and for blocking vehicular traffic.

PO Dress stated that there was a passenger in the car, sex unknown. He does not recall whether that passenger exited the vehicle, or if he was instructed to exit the vehicle by PO Clarke, but that he himself did not instruct the passenger to leave.

PO Dress stated that § 87(2)(b) did give him a reason to fear for his safety, for the fact that he did not comply with the request to hand over the bottle. PO Dress did not recall if he took any precautions to ensure his safety after § 87(2)(b) exited the vehicle. He asked § 87(2)(b) to exit the vehicle so that he could obtain the bottle of alcohol. PO Dress stated that he does not recall if he frisked § 87(2)(b) but if he had, it would have been to ensure his safety, due to § 87(2)(b)'s resistance to hand over the bottle.

PO Dress did not recall PO Clarke having interaction with either passenger.

When the allegations were addressed, PO Dress stated that he did not remember if he searched any other part of § 87(2)(b)'s vehicle, nor if he had a reason to search any other part of § 87(2)(b)'s vehicle. PO Dress did not recall physical contact, nor did he threaten to fight § 87(2)(b).

When questioned whether anything else was going on with § 87(2)(b)'s vehicle, PO Dress responded that there were people going in and out of § 87(2)(b)'s vehicle.

#### ***PO Melissa Clark***

PO Clark was interviewed by the CCRB on August 16, 2006 (enclosure 13a-b). PO Clark stated that she did not recall the incident. She did not have any memo book entries concerning the incident, no references to car stops, or to radio runs for suspicious vehicles. Her closest memo book entry to the time of incident was at 11:56, when she went to a call for help at 700 Lenox Avenue (about 145<sup>th</sup> Street).

#### **Police Documents**

##### ***SPRINT***

At 11:04 pm on December 19, 2005, there was a radio communication reporting a suspicious vehicle/possible crime at West 142<sup>nd</sup> Street and Lenox Avenue in Manhattan. Sector car A responded to the scene at 11:04 and left at 11:20 after issuing a summons (enclosure 14).

##### ***Summons Dispositions***

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]

#### ***CCRB Histories***

This is the first complaint that § 87(2)(b) has filed with the CCRB.  
Neither PO Dress, nor PO Clark have any previously substantiated CCRB Complaints.

#### ***Conviction History***

A BADS search of § 87(2)(b) dating back to January 1, 1999 reveals no arrests.

### **Conclusions and Recommendations**

#### ***Disputed and Undisputed Facts***

§ 87(2)(g) PO Dress did not recall whether or not he frisked § 87(2)(b) but denied that he searched the interior of § 87(2)(b)'s vehicle. PO Dress further denied that he threatened to fight § 87(2)(b) or that he had any physical contact with § 87(2)(b).

PO Clark did not recall the incident at all, and therefore did not give any testimony pertaining to the incident.

#### ***Credibility Assessment***

§ 87(2)(g) He openly admitted during his interview that there was an empty bottle of alcohol in the vehicle, and that he had misunderstood the law pertaining to open alcohol containers. § 87(2)(b) thought that only the operator of a vehicle was not allowed to drink. § 87(2)(b) was not suspected of having consumed alcohol by PO Dress. § 87(2)(g)  
[REDACTED]

§ 87(2)(g)

*Allegations not pleaded*

§ 87(2)(g)

The alleged frisk of § 87(2)(b) is not being pled because § 87(2)(b) did not provide a statement to the CCRB. Furthermore, § 87(2)(b) did not witness § 87(2)(b) being frisked; he was informed of this later by § 87(2)(b) § 87(2)(g)

**Allegation A: PO Robert Dress stopped the vehicle in which § 87(2)(b) was an occupant.**

PO Dress stated that § 87(2)(b)'s vehicle was already stopped, and that he had sounded the siren to get the vehicle to move out of the way. When the vehicle did not move, PO Dress and PO § 87(2)(b) exited their vehicle and approached § 87(2)(b). Conversely, § 87(2)(b) stated that he had been briefly stopped when he observed the police vehicle. Once § 87(2)(b) began to drive again, the police sounded their sirens, and pulled behind § 87(2)(b)'s vehicle in order to get him to pull over and put their sirens on.

In addition, there was a SPRINT ( enclosure ) report for a suspicious vehicle at the same time, place, and location of the incident. From § 87(2)(b)'s own account his vehicle § 87(2)(g) was stopped in a moving lane of traffic. § 87(2)(g)

**Allegation B: PO Clark spoke obscenely and rudely to § 87(2)(b)**

PO Clark allegedly asked § 87(2)(b) if he was a "smart ass," and he responded, "No, I'm a smart person." § 87(2)(g)

**Allegation C: Force: PO Dress used Physical Force against § 87(2)(b)**

§ 87(2)(b) alleged that PO Dress pulled him out of his vehicle after § 87(2)(b) initially refused to exit on his own accord.

As stated in *Kamins' Search and Seizure*, the NYS Court of Appeals has viewed the ordering of a person out of a vehicle to be equivalent to a "stop." Both a traffic stop and an investigative stop must be based on a reasonable suspicion, i.e. suspicion that a traffic violation has been committed or suspicion that criminal activity is afoot. Thus, if a driver is lawfully stopped for either reason, he can be ordered out of his car ( enclosure 1). § 87(2)(g)

§ 87(2)(b) acknowledged that he initially refused to exit his vehicle on his own. § 87(2)(g)

**Allegation D: PO Robert Dress frisked § 87(2)(b)**

While PO Dress did not recall if he frisked § 87(2)(b) he did recall that he asked § 87(2)(b) to step out of his vehicle. PO Dress stated that § 87(2)(b) had given him a reason to fear for his safety because he had not complied with his request to hand over the empty bottle of alcohol, and because he was not giving straightforward answers to PO Dress and PO Clark. § 87(2)(b) admitted that he was sarcastic with the officer, and would not hand over the empty bottle.

According to NYPD Patrol Guide Procedure 212-11, a frisk is permitted when an officer reasonably suspects that s/he or others are in danger of physical injury (enclosure 3). § 87(2)(g)

§ 87(2)(g)

**Allegation E: PO Dress searched the vehicle in which § 87(2)(b) was an occupant.**

According to both § 87(2)(b) and PO Dress, § 87(2)(b) had an empty bottle of malt alcohol beverage in the console between the two front seats. Section 1227 of the New York State Vehicle and Traffic Law (enclosure 2) states that the drinking of alcoholic beverages, or the possession of an open container containing an alcoholic beverage, in a motor vehicle located upon the public highways or right-of-way public highway is prohibited. Any operator or passenger violating this section shall be guilty of a traffic infraction.

PO Dress could neither deny nor confirm that he had searched § 87(2)(b)'s vehicle, as he did not recall any reason he would have had for conducting the search. Additionally, PO Dress stated that he did not ask § 87(2)(b) to exit the vehicle. The law does not allow an officer to search a civilian's vehicle in the event that they are being stopped for a traffic infraction.

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: